

EFFECTIVE JUDICIAL PROTECTION: THE PROBLEM OF LEGAL DEFINITION AND PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

ANNA LAZEBNA, student

OLGA OVSIANNIKOVA, Associate Professor, PhD in Law, Scientific Adviser

OLGA ZELINSKA, Associate Professor, PhD in Linguistics, Language Adviser

Yaroslav Mudryi National Law University

The main duty of a law-governed state is the decent guarantee of human rights and freedoms. Due to the fact that the Constitution of Ukraine announced the course on the formation of a law-governed state, the problem of the effectiveness of legal protection of human rights, in particular the effectiveness of the protection of these rights in court according to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, becomes a priority. The question of the effectiveness of judicial proceedings takes place in a civilized society.

The issues of the effectiveness of judicial protection are regulated by the Constitution of Ukraine, the Law on the Judiciary and the Status of Judges, the Law on the Implementation of the Judgments and the Application of the Practice of the European Court of Human Rights. In addition to national regulatory documents, there are a number of international legal instruments that guarantee this human right and formulate it as a rule, as a human right to an effective national legal remedy. These are, in particular, Article 8 of the Universal Declaration of Human Rights, Clause 3 of Article 2 of the International Covenant on Civil and Political Rights, Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It is worth mentioning that there is no clear definition of the term “effective judicial protection”. However, Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms states that everyone, whose rights and freedoms recognized in this Convention have been violated has the right to an effective remedy before the national authority even if such an infringement has been committed by persons who exercised their official authority.

Article 55 of the Constitution of Ukraine states that everyone has the right, by any means not prohibited by law, to protect their rights and freedoms from violations and unlawful encroachments. A person is free to choose any means to protect his or her rights. Everyone is guaranteed the right to appeal in court decisions, actions or inactivity of state authorities, local self-government bodies, officials and officers. Everyone has the right, after the use of all national remedies, to apply for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations whose member or participant Ukraine is.

The current practice forces individuals to apply for the protection of their rights and interests before international courts.

The European Court of Human Rights is an international judicial body whose jurisdiction extends to all member states of the Council of Europe which have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. The ratification of the European Convention on Human Rights by Ukraine in 1997 allows all persons under the jurisdiction of our state to file complaints with the European Court of Human Rights (ECHR) if they consider their rights to be violated. To address a complaint to the ECHR, certain conditions must be taken into account: 1) the rights and freedoms guaranteed by the Convention or its protocols may be the subject of a complaint; 2) the complaint must be filed no later than six months after the final consideration of the matter by the competent state body – this term is not renewable; 3) complaints may only be made on the violations that took place after ratification by Ukraine (July 17, 1997); 4) in order for the complaint to be admitted in essence, the applicant must exhaust all domestic remedies to protect his or her right and, above all, judicial means of such protection; 5) complaints addressed to the European Court should relate to the events for which the government is responsible. Complaints against private individuals and public organizations are not considered.

The European Court is not the highest instance in the judicial system, therefore, it does not cancel the decision made by the state authority or national court, does not give directions to the legislator, does not exercise abstract control of national legislation or judicial practice, has no right to give instructions on taking actions having legal consequences. The court only considers specific complaints in order to establish whether there has actually been a violation of the Convention requirements. However, the court has the right to award “fair satisfaction of claims” in the form of financial compensation for material damage and non-pecuniary damage, as well as reimbursement of all expenses.

According to Article 46 of the Convention, the supervision of the implementation of the Court decisions is transmitted to the Committee of Ministers of the Council of Europe. Their task is not only to monitor the payment of reimbursement, but also how the state authorities correct the legislative gaps that have become grounds for referring to the European Court of Human Rights.

The main problem in Ukraine is the enforcement of ECHR judgments, in particular the payment of compensation, because in the Law “On the State Budget”, for the most part, there is a lower amount of reimbursement funds than is provided by decisions of the European Court. The number of lawsuits from Ukraine is increasing due to the urgent problems of the state: the annexation of the Crimea, an armed conflict in eastern Ukraine, so there are insufficient funds for compensation.

According to Article 8 of the Universal Declaration of Human Rights of 1948, everyone has the right to an effective remedy by the competent national courts in cases of violation of its fundamental rights granted to it by a constitution or by law.

It should be noted that Article 2 of the International Covenant on Civil and Political Rights of 1966 and Article 13 of the Convention for the Protection of

Human Rights and Fundamental Freedoms ratified by national law also enshrine the right to effective judicial protection.

In accordance with Article 6 of the Convention, everyone has the right to a fair and public hearing of his case within a reasonable time by an independent and impartial tribunal established by law.

Article 6 of the Convention provides for the right to a fair trial. There is no requirement for States to establish appellate or cassation courts. Where such courts exist, the safeguards contained in this article must also be consistent with ensuring effective access to those courts (paragraph 25 of the 'Delkur v Belgium' judgment of 17 January 1970 and § 65 of the judgment in the case 'Hoffman v. Germany' dated October 11, 2001).

In case of violation of the right to a fair trial, the interpretation of this article by the European Court of Human Rights not only contains the detailed description of the guarantees provided to the parties in civil cases, but also protects, first of all, the possibility the use such guarantees that is access to the court.

Consequently, the right to a fair trial, enshrined in Article 6 of the Convention, must be regarded as the right to access to justice. That is, Ukraine should create conditions for ensuring the accessibility of justice as a generally accepted international standard for fair justice. The most extensive interpretation of the content of this right can be found in the judgments of the European Court of Human Rights in the numerical application of Article 13 of the Convention, which is known to be the part of the Ukrainian legislation. Article 13 of the Convention guarantees the effective remedy by the appropriate national authority to anyone whose rights and freedoms set forth in the Convention have been violated.

Although this wording is quite understandable in legal terms, with the interpretation of Article 13 the Court faced more problems than the interpretation of other articles of the Convention. The court concluded that the protection offered in Article 13, should apply to all cases of substantiated allegations of violation of the rights of the freedoms as guaranteed by the Convention. In 'Silver and Others v. the United Kingdom' (1983), the Court made the following clarification: "When a person makes a statement alleging a violation of the rights guaranteed by the Convention, he must have remedies before the appropriate national authority, in order to her question was resolved, and in order to receive compensation, if necessary".

Article 13 contains a requirement that the remedy must be effective in order to satisfy the requirements of this article. When a person complains that the available remedies have been ineffective, the court decides that the respondent government must prove the existence of such effective remedies in an analogous case.

Consequently, the notion of effective judicial protection exists, it is interpreted in various cases of the European Court of Human Rights. The effectiveness of a legal remedy for the protection of human rights is its property, which is the theoretical capacity and the real ability of this medium to ensure the achievement of its social goal - to protect human rights.

The above analysis makes it possible to conclude that the content of the requirement for legal certainty as one of the demands for the principle of legal certainty regarding the realization of the right of everyone to effective judicial protection is: 1) the requirement of a clear wording of the legal norm, which is the main group in the requirements for the definition of the legislation regulating social relations that arise in the implementation of the aforementioned right; 2) the conditions under which the restriction of the right of everyone to effective judicial protection is to be clearly stated; 3) normative legal acts regulating social relations that arise in the realization of the right of everyone to an effective judicial protection must be necessarily made public; 4) changes introduced into the law governing the social relations that arise in the realization of the right of everyone to effective judicial protection must be predictable; 5) the rules of law governing the social relations that arise when implementing the right of everyone to an effective judicial protection must be stable.

References

1. Дешко Л. Право звертатися за захистом своїх прав до міжнародних судових установ чи організацій у контексті генезису національної системи конституційного права / Л. Дешко // Підприємництво, господарство і право. – 2016. – № 7. – С. 99–104.
2. Конституційне право на звернення до міжнародних судових установ та міжнародних організацій [Текст] : монографія / Л. М. Дешко // Ужгород. нац. ун-т. – Ужгород : Гельветика, 2016. – 387 с.
3. Закон України Про Державний бюджет на 2018 від 07.12.2017 № 2246-VIII. URL <http://zakon2.rada.gov.ua/laws/show/2246-19>
4. Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe. European Treaty Series N5. Retrieved from: <https://rm.coe.int/1680063765>
5. International Covenant on Civil and Political Rights (ICCPR). Retrieved from: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
6. Universal Declaration of Human Rights (UDHR). Retrieved from: <http://www.un.org/en/universal-declaration-human-rights/>

E-GOVERNMENT AS A NEW MODEL OF GOVERNANCE IN MODERN CONDITIONS

YULIYA LIAKH, PhD student

S. O. GAIDUCHENKO, scientific supervisor, Doctor of Science in Public Administration

O. L. ILIENKO, language advisor, PhD in Philology

O. M. Beketov National University of Urban Economy in Kharkiv

Establishing relations between the subjects and objects of public administration in modern conditions is one of the key tasks of Ukraine. Today, e-Government is regarded as an effective mechanism of public administration and a form of cooperation between the state and the citizens. The state should build an optimal system of operation, the main factor of which is the openness,